

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 109 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

1 to 5: No

COMMISSIONER OF INCOME-TAX

Versus

BOMBAY CONDUCTORS & ELECTRICALS LTD.

Appearance:

MR BB NAIK for MR MANISH R BHATT for Petitioner
MR JP SHAH for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 19/11/98

ORAL JUDGEMENT (per R. Balia, J.)

Heard the learned counsel for the parties.

2. As shall be presently noticed, the issue having become academic, we decline to enter into the merits of the question referred and answer the same. The assessee

is a limited company. For the Assessment Year 1978-79 penalties had been imposed on the assessee under the provisions of Sales Tax Act which amount was claimed by the assessee as deduction from its income. The ITO disallowed the said deduction and such disallowance was sustained by the CIT (Appeals). After the order of the CIT (Appeals), the Assistant Commissioner of Sales Tax had deleted the penalties under the Sales Tax Act. Then the matter was heard by the Tribunal. Taking into consideration the subsequent decision of the Assistant Sales Tax Commissioner the penalties under the Sales Tax Act was not found to be justifiable, the Tribunal allowed the deduction claimed by the assessee. On these facts, the following question of law has been referred for consideration of this court:-

"Whether the amounts are eligible to deduction even when they changed their character as contended by the assessee and there remained no liability on account of penalty being deleted by the Sales-tax authorities?"

3. A statement has been made by the learned counsel for the assessee that though the assessee has been given deduction of the penalties imposed and paid by him during the previous year relevant to A.Y. 1978-79, consequent to allowance of his appeal resulting in deletion of penalty, the said amount has been included in taxable income of the assessee for A.Y. 1985-86 and has been brought to tax. The assessee being a company and liable to pay tax at the relevant time under a flat rate, there being no change in the rate of tax to the detriment of revenue, the issue has become of academic importance, so far as levy of tax is concerned. Any modification in the order will merely result in deletion of deduction in the year in question giving rise to claim to delete the addition of the same in the later years.

4. We are inclined to accept this statement of learned counsel for the assessee that in the circumstances the question has become of academic importance and we, therefore, decline to answer the same.

(hn)